REMARKS/ARGUMENTS

The Examiner has indicated that the drawings filed with the original application are accepted. Applicant appreciates the Examiner's indication of acceptance and hope that the amendments presented herewith alleviate the Examiner's remaining rejections.

Applicants have herein amended claim 1 and 3 to correct minor informalities therein and to make the text of dependent claim 3 consistent with the amendment made to independent claim 1. None of the amendments to any of the claims are intended to narrow the claims in any manner or are made for any purpose related to patentability. Applicants submit that all such claim amendments are fully supported by Applicant's originally filed specification.

Claims 1-8 were pending in the present application. Claims 9-17 are added by the present amendment and find support in the drawings and specification the original application (see e.g., paragraph [0026] and FIGs. 3-4 of the published application). Claims 1-17 are currently before the Examiner for consideration. Reconsideration of this application is respectfully requested in view of the amendments and/or remarks provided herein.

35 USC § 112

The Examiner rejected claims 1-5 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner indicates that it is improper to recite "each pair of guide tracks" subsequent to the recitation "at least one pair of guide tracks." Applicant respectfully disagrees because, even if there were only one pair present, there will still be a pair of guide tracks thereby supporting use of the term "each pair." Nevertheless, to advance prosecution without further limiting Applicant's claim, Applicant has amended claim 1 to mirror the language of independent claims 6 and 8, which were not rejected as indefinite by the Examiner.

35 USC § 103

The Examiner rejected claims 1-8 as being unpatentable over Quasius (U.S. Pat. No. 5,839,493) in view of Wells (U.S. Pat. No. 6,065,525).

Applicant respectfully disagrees. In order to provide a proper obviousness rejection under 35 USC 103 (1) there must be some suggestion or motivation, either in the references

7

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference must teach or suggest all of the claim limitations. M.P.E.P. § 2143.

Neither Quasius nor Wells teach "interlocking flexible *slats that define at least one angled recess*" (emphasis added) as per the claim language of independent claims 1, 6 and 8. Both Quasius and Wells <u>add</u> a stop element <u>to the ends of</u> their slats. As a result, neither reference discloses angled recesses integrally formed in and thereby *defined by* the bodies of the slats themselves to engage protruding members of the guide tracks when the slats are deflected due to exertion of a displacement force against the claimed barrier assemblies. Instead of disclosing or suggesting slats that define angled recesses, both of the references introduce additional elements in an attempt to perform a similar retention function in the presence of displacement forces. Note that the omission of an element and <u>retention</u> of its function is an indicia of unobviousness. *See* M.P.E.P. § 2144.04(II)(B) (emphasis in original). Therefore, even assuming *arguendo* the combination of references is proper, which we do not, the resulting combination does not teach all of the claim limitations of the independent claims and the rejection cannot be maintained.

In addition, with respect to Claim 8, neither reference discloses both "at least one angled recess" and "a second recess" as recited in the claim. The second recess is constructed to enable the slats to engage at least one of the guide rails to further assist in retaining the slats in the guide channel in the event that the slats are deflected due to exertion of the displacement force against the barrier assembly (*see, e.g.*, paragraph [0028] of the published application).

The present invention teaches that the recess is part of and defined by the slat and not a piece added to the slat. The addition of a stop element to the slat, as taught by Quasius and Wells, actually increases the overall cost and complexity of the system because it requires manufacture of the shutter and then addition of the stop element. Having two components lends the possibility of separation of the stop element from the slat. In addition, the stop element may be made of a different material than the slat and therefore have a different resistance and deflection value. This difference in material strength may cause the stop element to bend independently of and/or detach from the slat upon application of a displacement force to the slat. If the stop element does bend, future operation of the rolling shutter could be impeded. The

8

Appl. No. 10/672,797
Response dated Oct. 18, 2005
Reply to Office Action dated July 18, 2005

present invention alleviates that issue by eliminating an unnecessary component. *See* M.P.E.P. § 2144.04(II)(B).

The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111.

Respectfully submitted,

By: _____ 10·5·o6
Patricia B. McQueeney
Attorney for Applicant
Reg. No.: 49,083
BRINKLEY, MCNERNEY,
MORGAN, SOLOMON & TATUM, LLP
200 East Las Olas Blvd., Suite 1900
Ft. Lauderdale, FL 33301
Phone: (954) 522-2200/Fax: (954) 522-9123
Email: patricia.mcqueeney@brinkleymcnerney.com

G:\wpfiles\clients\Ceccofiglio D\02678-PAT-SLAT RETENTION SYSTEM\First Amend Resp 101805.doc

9